

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
STALIN RODRIGO REYES ESPINOZA,

PLAINTIFF,

-against-

Index No.:

515197/19

DAVS PARTNERS LLC AND KALNITECH
CONSTRUCTION COMPANY,

DEFENDANTS.
-----X

DATE: April 11, 2022

TIME: 11:00 a.m.

EXAMINATION BEFORE TRIAL of the
Defendant, DAVS PARTNERS LLC, taken by the
respective parties, pursuant to a Court
order, held at the above date and time,
before Aileen Koven, a Notary Public of the
State of New York.

1
2 A P P E A R A N C E S
3

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15 BY: ROBERT BRIGANTIC, ESQ.
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* * *

221. UNIFORM RULES FOR THE
CONDUCT OF DEPOSITIONS

221.1 Objections at Depositions

(a) Objections in general. No objections shall be made at a deposition except those which, pursuant to subdivision (b), (c) or (d) of Rule 3115 of the Civil Practice Law and Rules, would be waived if not interposed, and except in compliance with subdivision (e) of such rule. All objections made at a deposition shall be noted by the officer before whom the deposition is taken, and the answer shall be given and the deposition shall proceed subject to the objections and to the right of a person to apply for appropriate relief pursuant to Article 31 of the CPLR.

(b) Speaking objections restricted. Every objection raised during a deposition shall be stated succinctly and framed so as not to suggest an answer to the deponent and, at the request of the questioning attorney, shall include a clear statement as to any defect in form or other basis of error or irregularity. Except to the extent permitted by CPLR Rule 3115 or by this rule, during the course of the examination persons in attendance shall not make statements or comments that interfere with the questioning.

221.2 Refusal to answer when objection is made. A deponent shall answer all questions at a deposition, except (i) to preserve a privilege or right of confidentiality, (ii) to enforce a limitation set forth in an order of the court, or (iii) when the question is plainly improper and would, if answered, cause significant prejudice to any person. An attorney shall not direct a deponent not to answer except as provided in CPLR Rule 3115 or this subdivision. Any refusal to answer or direction not to answer shall be accompanied by a succinct and clear statement of the basis therefor. If the deponent does not answer a question, the examining party shall have the right to complete the remainder of the deposition.

221. UNIFORM RULES FOR THE
CONDUCT OF DEPOSITIONS

221.3 Communication with the deponent

An attorney shall not interrupt the deposition for the purpose of communicating with the deponent unless all parties consent or the communication is made for the purpose of determining whether the question should not be answered on the grounds set forth in section 221.2 of these rules and, in such event, the reason for the communication shall be stated for the record succinctly and clearly.

IT IS FURTHER STIPULATED AND AGREED that the transcript may be signed before any Notary Public with the same force and effect as if signed before a clerk or a Judge of the court.

IT IS FURTHER STIPULATED AND AGREED that the examination before trial may be utilized for all purposes as provided by the CPLR.

IT IS FURTHER STIPULATED AND AGREED that all rights provided to all parties by the CPLR cannot be deemed waived and the appropriate sections of the CPLR shall be controlling with respect hereto.

IT IS FURTHER STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that a copy of this examination shall be furnished, without charge, to the attorneys representing the witness testifying herein.

HUDSON

DWAYNE HUDSON, called as a witness, having been first duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

EXAMINATION BY

MR. KLEIN:

Q: Please state your name for the record.

A: Dwayne Hudson.

Q: What is your address?

A: 4423 Seton Avenue, Bronx, New York 10466.

Q: Good morning, Mr. Hudson.

A: Good morning.

Q: My name is Kenneth Klein. I am with the law firm of Gorayeb & Associates and we represent the Plaintiff in this lawsuit. I will be asking you some questions this morning. If you don't understand my question, there is something wrong with the transmission, if I am not speaking loud enough, I am speaking too fast, if I use a word you are not familiar with, any reason at all you do not

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understand my question, tell me and I will try to fix the problem for you.

A. Okay. Thank you.

Q. The court reporter can't take down nods of the head that usually comes up with a yes or no answer. So you just have to verbalize all of your answers. Okay?

A. Yes.

Q. Finally, anytime you want to take a break, go to the bathroom, get a call, make a call, just to stretch, any reason at all, you need a break as long as there is no open question, tell me and we will accommodate you.

A. Okay.

Q. If there is an open question you just have to answer the question before you take the break.

A. Yes.

Q. In preparation for today's deposition, did you review anything?

A. I just had a meeting a few minutes ago. Just kind of jog my memory about some stuff, about the dates. That's

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about it.

Q. Did you speak to anybody?

A. Yes. I spoke to the lawyer here.

Q. Other than your lawyer, did you speak to anybody?

A. No.

Q. I saw when you were sitting in the other chair you had a yellow notepad in front of you, do you have notes on that pad?

A. Just dates. Just some dates I have there.

Q. If you are going to use that to testify we have to mark that as an exhibit. We will make that Plaintiff's Exhibit 7. Can you give that document to your attorney when we're finished with the deposition today.

A. Yes.

Q. He will make copies.

A. Yes.

Q. He will send copies to everyone.

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A. Okay.

MR. RICHMAN: Will do, no
problem.

MR. KLEIN: Thank you.

(Whereupon, piece of paper was
deemed marked as Plaintiff's Exhibit
7 for identification as of this date
by the Reporter.)Q. Are you currently employed,
sir?

A. Yes.

Q. By who?

A. Employed by New York Electric.

Q. When did you become employed by
New York Electric?

A. Three weeks ago.

Q. Back in June of 2019, were you
employed?

A. Yes.

Q. By who?

A. A.S.K. Electric.

Q. When did you first --

MR. BRIGANTIC: Excuse me.

We're going to have an issue here.

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1
2 Just before you get rolling, I
3 subpoenaed documents from A.S.K.
4 Electric and because this was a
5 deposition of DAVS Partners I did not
6 make a stink about the fact that
7 A.S.K. never responded to my
8 subpoena. If A.S.K. Electric which
9 is going to likely be a party to this
10 litigation after this deposition is
11 going to appear as the witness
12 designee for Davs, that can be an
13 issue. Because Davs --

14 MR. RICHMAN: We understand
15 your position.

16 MR. BRIGANTIC: I am not
17 waiving a deposition of A.S.K.'s
18 deposition.

19 MR. RICHMAN: No one said you
20 are waiving. I am not taking a
21 position that you are waiving. Right
22 now A.S.K. is not a party. Why don't
23 you proceed.

24 MR. BRIGANTIC: Then how is
25 this a party deposition?

1 HUDSON

2 MR. RICHMAN: He is here on
3 behalf of -- how is this a party
4 deposition? Then there should be no
5 party deposition. Because A.S.K. is
6 not a party. Then we should cancel
7 the deposition altogether.

8 MR. BRIGANTIC: Can you ask the
9 witness to step outside your office
10 for a minute?

11 MR. RICHMAN: Sure.

12 MR. BRIGANTIC: Off the record.

13 (Whereupon, a discussion was
14 held off the record.)

15 MR. BRIGANTIC: I just want to
16 put on the record that we had a
17 conversation off the record so that
18 we didn't add up all the stuff into
19 the transcript and it was agreed that
20 by proceeding today with Mr. Hudson's
21 deposition Mr. Hudson being a former
22 employee of A.S.K. Electric that my
23 client Kainitech Construction Corp.
24 is in no way waiving a deposition of
25 A.S.K. Electric or a representative

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of Dava Partners itself.

MR. RICHMAN: That's agreed to.

MR. BRIGANTIC: Thank you. I appreciate the courtesy.

Q. So Mr. Hudson, you testified that on June 28, 2019 you were employed by A.S.K. Electric; is that correct?

A. Yes.

Q. When did you start with A.S.K. Electric?

A. I start in 2013.

Q. What was your position on June 28, 2019?

A. I was in charge of electric, the foreman running the project, doing electric for the new office.

Q. Were you a project manager?

A. Yes.

Q. Your employer was A.S.K. Electric; is that correct?

A. Yes.

Q. Then what were your duties as project manager back in June 2019?

A. Well, my duties like I say I am

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in charge of electric. So from the demo to the new buildup and the guys doing work need me, also electricians. I would be in charge of them plus I also work on the project myself, also.

Q. Are you familiar with a company known as Davs Partners?

A. I only familiar with the boss. I just found out about the company right now. I work for A.S.K. Electric. I believe David owns -- I'm saying I work for A.S.K. Electric. They're company Davs. Davs Partners I heard is the owner that's under the contract. That's on the project, the same owner. My boss David Kleeman, David Kleeman, they also own Davs Partners.

Q. How do you spell Kleeman?

A. K-l-e-e-m-a-n.

Q. So David Kleeman is the boss of A.S.K. Electric; is that correct?

A. Yes.

Q. To your understanding, he is also a partner in Davs Partners?

A. Yes. Yes.

HUDSON

1
2 Q. Are you familiar with certain
3 property at 217-14 Hempstead Avenue in
4 Queens?

5 A. Yes, that's the location of the
6 new office I was working on.

7 Q. Do you know who the owner of
8 that property is now?

9 A. David Kleeman.

10 Q. Do you know when he became
11 owner of the property?

12 A. I don't know.

13 Q. When you say he is the owner,
14 are you saying he is the owner individually
15 or as Dava Partners LLC or you don't know?

16 A. For me, I don't know. His has
17 new office and so I am saying he is the
18 owner of the new office. I don't know
19 about the old background behind the
20 David -- the Dava Partners, that I don't
21 know.

22 Q. Could you describe what is
23 there, what that property looks like? In
24 other words, is it a five story building, a
25 two story building, one story building,

HUDSON

what is there?

A. It's actually one story building. Half of it, the basement and one story. Pretty long property. So it kind of almost extends the full length of the property.

Q. You said there is a basement and a first floor?

A. Yes.

Q. Is that how it looked back in June of 2019?

A. Well, yes. Yes. It was under construction. So we just renovating it. Everything brand new, AC, you know, brand new electric. With different designs that they put based off of the plan they were working on.

Q. Was it a new building being built or was it an existing building being renovated?

A. Existing building being renovated.

Q. When did that project start, approximately?

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A. Up until the incident the project go on for about six months.

Q. Has the project been completed?

A. Yes.

Q. As of when?

A. Exact date, I do not know. But from the accident I think it was maybe like another three months. Everything was finished and they moved in.

Q. Are you familiar with the term general contractor?

A. Yes.

Q. What is your understanding of that term?

A. So a general contractor is hired to do a project. So in other words, the general contractor on that job was Gus. He was doing the build out and then we were doing the electric which I work for A.S.K. Electric. So I was doing the build out. I do not take orders from Gus. I take it from David.

MR. BRIGANTIC: Move to strike that. Go ahead.

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Q. So you said that the general contractor, was that a person named Gus or a company named Gus?

A. Well, the person named Gus.

Q. Does he have a last name?

A. All of that should be in the notes. I just know him as Gus. I am pretty sure in the notes the lawyer can give you the exact name. The last name.

Q. I only want to know what you know. Not what your lawyer knows.

A. Yes.

Q. So let me finish. We can't talk over each other. If you don't know something you can say I don't know or I don't remember. That's okay. I just don't want you to guess. You don't know Gus's last name, correct?

A. No.

Q. Do you know, does he work for a company?

A. I do not know none of this information from him. I know him on the project. That he is doing that project.

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The office at that time.

Q. Do you know if Gus was retained under a contract?

A. I do not know.

Q. A.S.K. Electric was retained in connection with this project; correct?

A. Yes.

Q. To do what in general?

A. It was their new office. They were relocating to a new Hempstead office that was being built.

Q. Did you ever see the contract?

A. No.

Q. I am going to show it to you and ask you if you ever saw this.

(Whereupon, the aforementioned contract was marked as Plaintiff's Exhibit 1 for identification as of this date by the Reporter.)

Q. Do you recognize any signatures, sir?

A. Yes. David Kleeman.

Q. He signed for A.S.K. Electric?

A. Repeat the question again.

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Q. Do you see on the right side David Kleeman's name?

A. Yes.

Q. Under the portion for A.S.K. Electric?

A. Yes.

Q. You recognize his signature, right?

A. Yes.

Q. You never saw this contract, correct?

A. No.

MR. KLEIN: That was Exhibit 1.

Q. Sir, were subcontractors retained in connection with the project?

A. Yes.

Q. Who retained the subcontractors?

A. Well, they had various, the AC, guys that take care of the AC and like I said the construction part which Gus he take care of that. They have the exterior work which is under Gus also. So that's the only thing I know.

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Q. Did you ever hear of a company called JIM Associates Corporation?

A. No.

(Whereupon, the aforementioned proposal was marked as Plaintiff's Exhibit 2 for identification as of this date by the Reporter.)

Q. Sir, do you see this proposal dated May 27, 2019?

A. Yes.

Q. On the screen?

A. Yes.

Q. This is Exhibit 2. Did you ever see this document?

A. No.

Q. Do you see on the left side it says Jim Associates Corporation?

A. Yes.

Q. It says to the right prepared by Jorge Moscoso?

A. Yes.

Q. Do you know who Jorge Moscoso is?

A. That's another contractor that

1 HUDSON

2 came in to finish up the project.

3 Q. Is Jorge affiliated with Jim
4 Associates or is he with another company?

5 A. That I do not know.

6 Q. You don't know if Jorge
7 Moscoso is employed by Jim Associates; is
8 that correct?

9 A. No.

10 Q. You see where it says customer
11 Gus?

12 A. Yes.

13 Q. You don't know who Gus works
14 for; correct?

15 A. I don't know who Gus works for.
16 I know Gus. Gus was the general contractor
17 doing the project.

18 MR. BRIGANTIC: Move to strike
19 that as nonresponsive.

20 Q. Do you know if there was any
21 contract between Gus and Jim Associates
22 other than this proposal?

23 A. No.

24 Q. Did you ever see any other
25 proposals between Jim Associates and Gus?

HUDSON

A. No.

Q. Can you bring up Exhibit 3.
(Whereupon, the aforementioned
proposal dated June 12, 2019 was
marked as Plaintiff's Exhibit 3 for
identification as of this date by the
Reporter.)

Q. Sir, you see this proposal
dated June 12, 2019?

A. Yes.

Q. It's Exhibit 3?

A. Yes.

Q. It's from Jim Associates
Corporation. Do you see that, sir?

A. Yes.

Q. Can you go to the second page?
Can you bring up to the bottom? Do you see
on this page, sir, that Jorge Moscoso
signed for Jim Associates?

A. Yes.

Q. David Kleeman signed on behalf
of somebody else?

A. Yes, I see that.

Q. Do you know if he signed for

HUDSON

Gus?

A. No, I'm not sure.

Q. Do you know if there is any relationship between David Kleeman and Gus?

A. The only thing I know they know each other. I think they're friends. That's about it.

Q. You don't know if Gus is part of Dava Partners LLC, correct?

A. No.

Q. Just for the record Exhibit 4 is a proposal dated June 26, 2019 which also has that general condition page which I just showed the witness. That's Exhibit 4.

(Whereupon, the aforementioned proposal dated June 26, 2019 was marked as Plaintiff's Exhibit 4 for identification as of this date by the Reporter.)

Q. You never saw any of those proposals before, right?

A. No.

Q. Were you at the project on June

HUDSON

28, 2019?

A: Yes.

Q. Why were you there?

A. Same as usual. Finishing up the project.

Q. What hours was the project ongoing? In other words, nine to five, eight to four, what were the hours?

A. From seven to 3:30.

Q. Was it five days a week, six days a week?

A. Five days a week.

Q. Monday to Friday?

A. Yes.

Q. What time did you arrive at work that day?

A. As usual. I arrive at work 6:45.

Q. What is the first thing you did when you got to work?

A. First thing I do when I get to work. The guy I am working with I give him the task that he is doing. I will also get myself prepared and ready. Gus will be

HUDSON

there to set his guys up. The place will be open up. We just continue our regular workday.

Q. How many workers did Gus have working under him?

A. It's various. There are guys coming in and out. Some days we will have maybe four or five guys there. Other times just only have two guys. Two always be there. But sometimes --

Q. What type of work did Gus's workers do at the project?

A. They do anything from framing, sheetrock work. Guys working on the exterior of the building, cement work. Basically everything -- they do everything except for the electric and security and AC work.

Q. Did Gus workers wear any particular type of T shirts at the job?

A. No, not really.

Q. Did A.S.K. employees wear any type of T-shirts at the job?

A. Yes. We always wear our

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HUDSON

T-shirt, blue that shows the company logo:
A.S.K. Electric.

Q. So A.S.K. wore blue shirts,
right?

A. Yes. With the company logo.

Q. Did A.S.K. provide any
supervision to Jim Associates?

A. No.

Q. Did they direct Jim Associates
workers?

A. No.

Q. Provide any ladders to Jim
Associates workers?

A. No.

Q. Any equipment or tools?

A. No.

Q. Do you know if Days provided
any such material or equipment to Jim
Associates?

A. No.

Q. No, you don't know or no, they
didn't?

A. No, they didn't. Jim -- they
have their own tools and they work with

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1 HUDSON

2 their own tools.

3 Q. Just so I am clear, Jim
4 Associates is a different company than the
5 company that Gus was with?

6 A. Gus -- that I don't know fully.
7 I am not going to try to answer or guess.
8 I am not really sure.

9 Q. Do you know if Gus was employed
10 by Jim Associates?

11 A. That I don't know.

12 Q. How many companies were working
13 at the project on June 28, 2019?

14 A. It was I would say three
15 companies. You got AC. You got A.S.K.
16 Electric and you got Jim. Jim and Gus guys
17 working together.

18 Q. Did you have the authority to
19 stop working if you saw an unsafe
20 condition?

21 A. Yes.

22 Q. Did you have the authority to
23 stop work if there was an unsafe work
24 method being used?

25 A. Yes.

HUDSON

Q. Did that apply if you saw a Jim Associates worker doing something dangerous?

A. Yes, I would stop it 100 percent.

Q. Are you familiar with an accident involving one of Jim Associates workers?

A. Yes.

Q. Do you know someone by the name Stalin Rodrigo Reyes Espinoza?

A. That's the guy that got hurt.

Q. Did you know him before he got hurt?

A. No. I probably saw the guy I think -- we have different guys in and out. I probably saw him twice on that project. He is a fairly new guy that started working there.

Q. Did you see that person's accident occur?

A. I so happened to turn my head. When I heard the commotion I was working ten feet away. I so happened to turn and I

HUDSON

saw him tumbling down with a ladder.

Q. I would like you to tell me what caused you to look in the direction of where the Plaintiff was or the worker was, what brought your attention to that area?

A. I heard a noise. I was working on the electrical panel which was ten feet away from where I heard the commotion. So when I turn and I look towards the closet and then I saw him coming down.

Q. Tell me exactly what you saw.

A. All right. I saw pretty much he's tumbling down like head first. The ladder and the everything. So he fall kind of head first into the corner of the closet on the right-hand side. There is an opening on the left-hand side of the closet that he was working above that opening.

Q. Are you finished?

A. No. I am saying there is an opening on the left-hand side he was working. He was working on top. When I heard the commotion and I looked he fall all the way to the right-hand side. Him

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and the ladder tumble down and he went down head first.

Q. Did the ladder fall over?

A. Yes.

Q. What type of ladder was it?

A. That was a regular A frame six foot ladder.

Q. Do you know whose ladder it was?

A. That belonged to his boss that he was working for.

Q. Who was that?

A. I'm not 100 percent sure if it was Jim or if it was Gus's ladder. But it definitely belonged to general contractor.

Q. When you saw him tumbling head first, was he already falling when you saw him or?

A. Yes.

Q. So you didn't see him go onto the ladder before he started to fall?

A. No.

Q. You saw him after you started to fall?

HUDSON

A. When I heard the noise I turned my head and I saw him coming down.

Q. Was there anybody holding the ladder at the time that you turned and saw this?

A. No. He was by himself.

Q. Did you ever speak to the injured worker?

A. No. Prior to the incident I never spoke to him.

Q. How about after the incident, did you speak to him?

A. Yes. I was trying to make sure he was okay. I called 911. I saw that he was hurt. So I trying to make sure he is okay.

Q. Did you ask him how the accident happened?

A. No.

Q. Did he tell you how the accident happened?

A. He pretty much didn't -- he pretty much wasn't really talking much. He was hurt. So he wasn't really talking

HUDSON

much.

Q. Did you do any type of accident report after this incident?

A. Yes. I sent an accident report to my office.

Q. For A.S.K. Electric?

A. Yes.

MR. BRIGANTIC: Was that produced?

MR. KLEIN: I never seen it.

MR. BRIGANTIC: I never seen it.

MR. KLEIN: But they're not a party.

MR. BRIGANTIC: This is not -- this is completely inappropriate. I subpoenaed documents. We were told there are no documents that A.S.K. Electric has anyway and now in a case where the Plaintiff has already been deposed and this witness is appearing there is an accident report we've never seen. How is that possible?

MR. RICHMAN: I've never seen

HUDSON

it either. I will make an inquiry.

MR. BRIGANTIC: During the next break why don't you check and before this witness leaves if we can get a copy of the report.

MR. KLEIN: Let me finish up here and we can check to get it for today. I doubt it.

Q. Other than yourself, do you know any other witnesses?

A. Of the accident?

Q. Right.

A. Just the guys who were working there. There was another worker I was with. Sayed he was working under me. He didn't see the accident. The regular workers that was there.

Q. Did you personally prepare the accident report?

A. No. I believe what it was I told him what happened and the date and I sent out a photograph but personally I don't remember me actually signing it. It was more like a verbal report that I give.

HUDSON

Q. You never saw --

A. I didn't sign any documents or anything.

Q. You never saw a completed --

A. Yes.

Q. You never saw a written accident report made regarding this incident?

A. Yes. I never did.

Q. If there was one, do you know if A.S.K. Electric gave one to Dava Partners?

A. No.

Q. No, you don't know?

A. No, I don't know.

Q. How about that photo you said you took, do you still have that photo?

A. I do not have it. The office should have it. I sent it.

Q. What was it a photo of?

A. It was a photo of the injured guy on the ground.

Q. Can you bring up Exhibit 5 please.

HUDSON

(Whereupon, the aforementioned photograph was marked as Plaintiff's Exhibit 5 for identification as of this date by the Reporter.)

Q. Do you recognize this photograph, sir?

A. Yes.

Q. What is it a photograph of?

A. That's where the guy was working. At the time there was nothing inside of it. There is a little storage section inside the closet on the left-hand side. I recognize that storage section.

Q. The ladder was below that opening?

A. Yes.

Q. Do you recall how tall the ladder was?

A. It was six foot A frame ladder. Open fully extended to six foot to the top.

Q. Could you bring up Exhibit 6?

(Whereupon, the aforementioned photograph was marked as Plaintiff's Exhibit 6 for identification as of

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this date by the Reporter.)

Q. Do you see the photograph, sir?

A. Yes.

Q. Do you recognize the person in the yellow shirt lying on the ground?

A. Yes. That's the guy that fell at the accident.

Q. Did you take this photograph?

A. Yes.

Q. Did you take any other photographs?

A. No, just the one.

Q. You didn't take the one I just showed you before the black and white one?

A. No.

Q. This is the only one you took, right?

A. That's the only photograph I took.

Q. Did other Gus employees wear yellow T-shirts like this gentleman has on?

MR. BRIGANTIC: Objection to the form of the question.

MR. RICHMAN: Objection. You

HUDSON

are assuming he is an employee of
Gus.

MR. KLEIN: Well, no. I am
asking did Gus's employees wear
yellow T-shirts similar to the one
the person on the floor is wearing.

MR. RICHMAN: How can he answer
that question if he doesn't know --

MR. KLEIN: I will phrase it
this way.

Q. Did you see any other workers
at the project wearing yellow T-shirts like
the person wearing the yellow T-shirt lying
on the floor has on?

A. My honest opinion they were
various different shirts and I actually
don't really pay so much attention to
exactly what they wear, what they wear.

Q. After you took this photograph,
did you ever see this worker again?

A. Never saw him again.

Q. Do you know Jorge Moscoso?

A. Jorge Moscoso?

Q. Yes.

HUDSON

A. No.

Q. Do you know if he was at the project on the day of the incident?

A. Who is Jorge Moscose? I don't know who that is.

Q. He was on that proposal I showed you Exhibit 2 that said he prepared the proposal from Jim Associates.

A. Okay. That's information I do not know. I just know the two main persons which are Gus and Jim. My boss David.

Q. Was there somebody named Jim?

A. Jim.

Q. Yes. You said you know someone named Jim and Gus. I am asking you was there a person named Jim?

A. No. George and Gus. Jim -- I know George had a brother. It was him and his brother. They run the company.

Q. Was George Jorge or you don't know?

A. I don't know the last names.

Q. Was Gus there on the date of the accident?

HUDSON

A. He wasn't there when the accident happened. I called him so --

Q. You called him later?

A. Afterwards.

Q. When he showed up afterwards, did you talk to him about the accident?

A. Yes. Yes, I explained what I saw, what happened. The fact that the emergency crew came in.

Q. Did Gus ask you who the worker worked for?

A. He did after. He knows -- they know all of this information. He didn't have to ask me or question me who does he work for. They are obviously familiar with whoever comes to the site.

MR. BRIGANTIC: Move to strike.

Go ahead.

Q. Did you ever ask the injured worker who he worked for?

A. No.

Q. What was your understanding as to who he worked for?

A. I know he works for the general

1 HUDSON

2 contractor. If it's Gus or George, I don't
3 know exactly. I know he works for the
4 general contractor that is doing the
5 sheetrock, the general construction part of
6 the job.

7 Q. So to your understanding, was
8 Jim Associates the general contractor?

9 A. Up to now, Jim, I don't know if
10 he filled in. I know George and Gus.
11 Jim -- is Jim George's brother? I don't
12 know.

13 MR. BRIGANTIC: I am going to
14 move to strike that. Sir, we're not
15 here to educate you.

16 MR. RICHMAN: If you don't know
17 the answer, right, if you don't know,
18 say you don't know.

19 A. Yes.

20 MR. KLEIN: I have nothing
21 further at this time.

22 EXAMINATION BY

23 MR. BRIGANTIC:

24 Q. Mr. Hudson, how far did you go
25 in school?

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HUDSON

A. I actually finished high school, just in Jamaica. What we have is CXE. These are back in Jamaica. These are the final exams that we do that's by the government.

Q. So you went to school in Jamaica?

A. Yes, yes. I finished high school, graduated.

Q. When did you come to the U.S.?

A. I came to the U.S. it was in 2000 -- 2005 -- 2005 or so.

Q. Mr. Hudson, how old were you when you came to the U.S.?

A. Probably around 20. Like around 20, 24. 24 or so.

Q. So you were around 24 in or about 2005?

A. Yes.

Q. Let's do this. How old -- sorry --

MR. RICHMAN: Ask him how old he is now.

Q. How old are you now?

HUDSON

A. I'm 29 right now.

Q. Before you came to the U.S., have you done any construction work?

A. No.

Q. Have you done any training with respect to construction work?

A. No.

Q. After you got to the U.S., what kind of work did you start out doing?

A. I started out -- actually carpentry. I started doing carpentry. But not experienced. Just basically assisting, cleaning up, stuff like that.

Q. Did that work have a title?

A. Basically just helping the person that was in charge.

Q. Was that a carpenter apprentice?

A. Yes.

Q. How long did you do that work?

A. I did it for I would say six months. Then electrician came on the job. I started learning electric.

Q. Did you ever get licensed as a

HUDSON

carpenter?

A. No.

Q. Did you get licensed as an electrician?

A. No.

Q. Are you presently licensed as an electrician?

A. No.

Q. So after doing six months work of carpentry apprentice work then you started doing electric work?

A. Yes. Electrical contractor that came to the job we were working and I asked if he could teach me and I started learning electric.

Q. What was the name of that company?

A. It was a private guy. He was pretty much working on his own. He didn't have a licensed company or anything. It was a small contractor, starting out.

Q. What was his name?

A. His name was Rocky the name of the guy that teach me.

HUDSON

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Q. Is that his formal name?

A. No. We just call him Rocky.

Q. What is his formal name?

A. His formal name, I don't remember. It's been a long time.

Q. How long did you work for him?

A. I work for him around two years.

Q. Do you know where his business was located?

A. He just -- he lived in Rosedale. So he didn't have an office. He just pretty much, I meet him at the job site. He didn't have an office. Just Rosedale where he worked.

Q. Now, after doing two years of work for him, what was your next job?

A. I continue electric. I work two years. I always look to move on and move myself up. So I continued doing electrical ever since.

Q. Listen to me. After you did the two years work with Rocky, what was your -- who did you work for next?

HUDSON

A. After I left Rocky I worked for City-Wide.

Q. City-Wide?

A. Yes.

Q. What kind of business is City-Wide?

A. Electrical company.

Q. Electrical contractor?

A. Yes.

Q. How long did you work for them?

A. I worked for them for a few years. I would say maybe six years or so.

Q. You were able to do that even though you weren't licensed as an electrician?

A. Yes. The company has the license so we work under their permit.

Q. While you were working with City-Wide, did you take any additional training?

A. No. Just on the job training.

Q. You left City-Wide at some point; correct?

A. Yes.

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HUDSON

Q. What was the next job you worked at?

A. A.S.K. Electric.

Q. So you went from City-Wide to A.S.K. Electric?

A. Yes.

Q. How did you come to work for A.S.K. Electric?

A. In City-Wide there was a worker I used to work with. His name is Chico. He got fired from City-Wide and then he start work for A.S.K. Electric. So he asked me, begging me to come aboard, come aboard. I waited till another two years, pretty much another two years and I decided to go.

Q. You started work for A.S.K. Electric in or about 2013?

A. Yes.

Q. Prior to working for A.S.K. Electric, did you have any OSHA training?

A. I got the -- no. I got my OSHA training while working with A.S.K. Electric.

HUDSON

Q. Where did you do that training?

A. Long Island City. There is a training school in Long Island City.

Q. When did you do it?

A. The exact date, I don't remember. First there was an OSHA 30 and as the year progressed we have to keep updating it.

Q. So you obtained an OSHA card?

A. Yes. Obtained an OSHA card. Whenever that expires we have to redo it.

Q. What type of training did that involve?

A. Safety. All of it has to do with safety on the job. Everything with safety, proper PE.

Q. Did you learn about anything as far as what you needed to do if there was an accident at the workplace?

A. Yes. It went through all examples and scenarios that happened.

Q. Do you know what a controlling employer is?

A. Yes.

HUDSON

Q. What is a controlling employer?

A. Somebody -- it has to be their way or the highway. Meaning they very stern behind whatever they want you to do. They pretty much don't let you breathe. You have to do it their way or that's it.

Q. When I ask you about controlling employer, does a controlling employer have any specific responsibilities on a job site?

A. I would say they pretty much responsible. If it's their project they responsible for the project. They want it to get done a certain way. Normally like I say safety is always first. Once you follow all the rules and everything then the project will go through smooth.

Q. With respect to the job that we're talking about today, when did you first start working at that job site?

A. From the date of the accident we started six months prior to when the accident start.

Q. So you personally started

HUDSON

working at the job site six months before this accident occurred?

A. Yes, approximately six months. Yes.

Q. When you started at the job site, what was your title?

A. I am there to do the electric for the new office. Taking care of the electric.

Q. Did you have a particular title?

A. Yes. I am the foreman, electrical foreman that is doing the project.

Q. So you were a foreman on the job?

A. Yes.

Q. Were you also the project manager?

A. Not the project manager. Just for electric.

Q. Didn't you testify earlier in this deposition that you were the project manager?

HUDSON

MR. RICHMAN: No, he didn't
testify to that.

A. No, I did not testify to that.

MR. RICHMAN: Just be clear. I
want to make a statement for the
record. Just to be clear he always
said he is the project manager only
for Electric.

MR. BRIGANTIC: I move to
strike that. That's your testimony.
That's not his. The witness is
testifying.

Q. Did this job site have sign in
sheets?

A. No.

Q. On the day of the accident the
only trades that were on the site was the
AC, A.S.K. Electric and Jim Associates?

A. Yes.

Q. Was Kalnitech Construction on
the job site?

A. I do not know them as that
name. So I -- what I told you, I don't
know the names behind all of these

HUDSON

projects. I just find out about all of that stuff just now as we speak. Like I said in terms of the AC, us and Electric and Gus and George, I don't know the exact name and everything that they work under. I just know them as they're responsible for the project.

MR. BRIGANTIC: Move to strike that.

Q. When you say that you just found out about these things, what do you mean by that?

A. By you asking me these names about the companies and everything. That's what I meant. So you asked me about the name of the company. I don't know all of these names that are associated with the project. It's not like I had -- I didn't have -- I go to do the job with electrical part. I don't see all the paperwork, the contracts for the projects. That stuff. That stuff.

Q. The purpose of this job was to renovate this building, is that correct?

HUDSON

A. Yes.

Q. After the job was completed, what person or entity was going to occupy the building?

A. My boss which is David Kleeman.

Q. Was it being renovated to be occupied by A.S.K. Electric?

A. Yes, yes. They transferring from their own location to the new office.

Q. You testified that you had the authority to stop work if you observed unsafe activities going on at the site, correct?

A. Yes. Yes.

Q. Did you observe the Plaintiff and how he was using the ladder prior to this accident?

A. I did not. I did not see if he had the ladder or anything. When I heard the commotion I turned and I looked.

Q. Why did you have the authority to stop work?

A. I am doing the job for my boss that owns the building. I also had OSHA 62

HUDSON

training, safety. So if I see any conditions and only based on me being a responsible person. If I see something that's dangerous I am going to stop it. That also protects everybody. I like the job go smooth and there is no issues.

Q. So you were there as the owner's representative?

A. Well, yes, for Electric. I am there if anything happened to the job I could pick up the phone and call my boss and say listen, there is a situation here and I will pass on the information.

Q. Was the Plaintiff doing electrical work?

A. No.

Q. You had the authority to issue a stop work, a stop work order if you observed him doing something unsafe; correct?

A. Yes. I would stop a person in a heartbeat.

Q. You had that authority as the owner's representative; correct?

HUDSON

A. Yes.

Q. While you were on the job site,
you were working for A.S.K. Electric;
correct?

A. Yes.

Q. What is a prime contractor?

A. A prime contract?

Q. Yes.

A. Well, I mean a prime contract,
I am just saying --

MR. RICHMAN: Only if you know.

A. I don't know. I have to look
it up.

Q. I don't want you to guess.
It's not a question of you looking it up.
I am asking you, from your --

MR. RICHMAN: If you don't know
you don't know.

MR. BRIGANTIC: Let me finish.
I am trying to be fair with the
witness.

Q. What I am asking you is, you
worked in the construction industry now for
approximately 17 years?

HUDSON

A. Yes, approximately.

Q. So what I am asking you based on your past work history and your experience, do you know what a prime contract is?

A. Yes. It would be the contractor, whoever is assigned to do the project. The contract details what the project entails and what you need to get done.

Q. That's the prime contractor?

A. Well, that's coming from my perspective.

Q. Do you know what a subcontract is?

A. Yes.

Q. What is a subcontract?

A. Well, a subcontract, after you have the main contract it would be the prime contract. The subcontract will be they pass on the work to another party to a portion of it. Like, for example, we as electricians would be a subcontractor to AC. AC work would be a subcontractor of

1 HUDSON

2 the main contract.

3 Q. When you talk about a main
4 contract or the prime contract, who are the
5 parties to such a contract?

6 A. I don't know.

7 Q. Well, I am asking generally,
8 who would usually be the parties to a prime
9 contractor?

10 MR. RICHMAN: Note my
11 objection. You can answer the
12 question.

13 A. It would be the person that
14 owns the project. They would basically
15 have the main contract drawn up to get the
16 job done. So I would say maybe in this
17 case David.

18 MR. RICHMAN: Don't guess.

19 Q. When the Plaintiff was injured,
20 you took the photograph of him on the
21 ground; correct?

22 A. No. At first I attend to him.
23 I took the photograph after I called the
24 ambulance.

25 Q. So you called the ambulance;

1 HUDSON

2 correct?

3 A. Yes. I called the ambulance,
4 911.

5 Q. How is it that you came to call
6 the ambulance?

7 A. Because I am the one that was
8 the closest. I saw what happened. I saw
9 he was injured and like with any person, it
10 doesn't matter what position, what they
11 told -- the first thing you would do is you
12 would seek medical help. So at that time
13 if he's injured, the first thing I did
14 which I did the right thing was to call 911
15 to have them call over to assist.

16 Q. So the first person you called
17 after the accident was 911; correct?

18 A. Yes, because he was injured.
19 If it was something not serious I probably
20 would have maybe reached out. I would have
21 reached out to my boss or so. The person
22 is injured on the ground, it would be
23 selfish for me not to make emergency call.

24 Q. Now, after you did that, did
25 you eventually call your boss?

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A. That was the second phone call.

Q. How soon after you called 911, did you call your boss?

A. Right after.

Q. Your boss is David Kleeman?

A. Yes.

Q. David Kleeman is your boss at A.S.K. Electric?

A. Yes.

Q. He is also the owner of this property?

A. Yes.

Q. After the Plaintiff fell, did he get up before you took the photo of him?

A. He did not get up.

Q. You were shown a photograph of the Plaintiff laying on the ground?

A. No.

Q. Earlier in this deposition you were shown a photograph of the Plaintiff laying on the ground; correct?

A. Yes.

Q. Did you take that photograph?

A. Yes. I take that photograph, I

HUDSON

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2 did not move him. The guys that were
3 there, they kind of moved him out of the
4 closet. He fell inside of the closet. He
5 was inside the closet. His other
6 co-workers that were there, kind of moved
7 him a little bit away from where he fell
8 and he was laying there. Like I said after
9 I call, after I call 911 and I call David,
10 I took a picture.

11 Q. So the photograph that you took
12 of him, did you take it with your cell
13 phone?

14 A. No. What I did I passed the
15 picture onto the office. That would be
16 kept in the records.

17 Q. When you passed it onto the
18 office, that is the office of A.S.K.
19 Electric?

20 A. Yes. I send it to David, to
21 David and yes, I meant to say I sent it to
22 David. I text David a picture.

23 Q. You texted it, correct?

24 A. Yes.

25 Q. You didn't e-mail?

1 HUDSON

2 A. No. I text him the picture.

3 Q. You said that you gave him a
4 verbal report of what happened?

5 A. Yes. I explained the situation
6 how the accident happened and, you know,
7 the procedures after.

8 Q. What did Mr. Kleeman say?

9 A. He was very concerned. The
10 ambulance.

11 Q. Did he tell you to call anyone
12 else?

13 A. I don't remember exactly the
14 conversation but I believe because at the
15 time Gus wasn't there. I had Gus's number
16 so I -- he didn't tell me to call anyone to
17 be honest. He made the phone call but with
18 me I also call Gus. Like I have Gus
19 number.

20 Q. Did you text Gus a picture of
21 the accident, a picture of the Plaintiff?

22 A. Not to my knowledge. No, I
23 don't --

24 Q. Now, when you did your training
25 for OSHA and your safety training, did you

HUDSON

learn anything about whether you would need to notify the local OSHA office of a work site accident?

A. No.

Q. Did you notify that the accident took place?

A. No.

Q. To your knowledge, did OSHA know -- did anyone put OSHA on notice that this accident had occurred?

A. No.

Q. To your knowledge, did OSHA do an investigation of this accident?

A. No one came to investigate -- OSHA didn't come to the site to investigate.

Q. With respect to the photograph that you took of the Plaintiff as I understand your testimony it does not depict how he landed?

A. No. It does not depict how he landed.

Q. It does not depict where he landed?

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HUDSON

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2 A. It's very close to. Right
3 there in the corner, the right-hand side of
4 the closet, that's where he landed.

5 Q. It does not depict his body
6 position when he landed?

7 A. No. No.

8 Q. Where did the ladder go after
9 the accident?

10 A. The ladder was leaning back on
11 the side. If you look on the left-hand
12 side of the picture, the ladder -- after
13 that I don't know where the ladder went but
14 the ladder was seen in the picture.

15 Q. Did you ever see the ladder
16 again?

17 A. No. No.

18 Q. After the accident, did you
19 inspect the ladder?

20 A. Yes. The ladder is in good
21 working condition.

22 Q. Why did you inspect the ladder?

23 A. Because I'm curious to see what
24 happened. I was just curious to see what
25 could have happened, why he fell. The

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HUDSON

ladder was fine. So it had to be a situation where he probably had it set up incorrectly.

Q. To your knowledge, did Gus look at the ladder?

A. I do not know.

Q. Prior to this accident occurring you started working on the site six months earlier; correct?

A. Yes.

Q. Was that when the project started?

A. No. The project started before. They did the demolition and they did some restructure and the reframing and then I started once the frame was up. I started running the wires and installing the panels and stuff.

Q. So the sequence of the work was that the demolition got done first?

A. Yes.

Q. Then the framing. Then the interior renovation, right?

A. Yes. Yes.

HUDSON

Q. You were on the site from the first time the interior renovation started, right?

A. After the framers finished with the partition with the offices and I came there when I install the electric.

Q. How long did you remain on the site working?

A. From start to finish. From when I came. When I started to when the project was done, completed.

Q. So you were there on-site for the entire duration of the project while the interior renovation was being done?

A. Yes. Up until the point where I was 100 percent done with all the new devices, the lights and then I was taken off the project. So I am assuming they probably still have small other works, maybe the carpenters were doing. For me, the electric, when the painting was done, all the new devices, lights and I completed that. Then I was taken off the project.

Q. Now, we talked about Jorge

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1 HUDSON

2 Moscoso. You mentioned his brother. Who
3 is his brother?4 A. I don't know much about his
5 brother. I am familiar with George and his
6 brother. The first time I met his brother
7 when his brother came there. I am not
8 familiar with his brother. I am familiar
9 with George from seeing him.10 Q. Why did you leave A.S.K.
11 Electric?

12 A. Me?

13 Q. Yes.

14 A. I just move onto another
15 opportunity. There was no --16 Q. When did you last work for
17 A.S.K. Electric?18 A. About two months ago was the
19 last time.20 Q. Did you tell Mr. Kleeman you
21 were leaving?22 A. Well, it was with the
23 supervisor. I had a disagreement with the
24 decision and I decided to leave. So I
25 didn't give notice or anything. I just the

HUDSON

supervisor, I am not going to do what he proposed and I was going to quit.

Q. Who was the supervisor?

A. Wazim.

Q. How do you spell that?

A. W-a-z-i-m.

Q. Does Wazim, is that a first name or a last name?

A. That's what we call him. I believe that's not his real name. I think Asad, something something. Everyone call him Wazim. I don't know if it's actual name?

Q. He worked for A.S.K. Electric?

A. Yes. He is a supervisor for A.S.K. Electric.

Q. What did he ask you to do that you refused to do?

A. Well, I started a project. It was two floors. A nice project. I am into the project probably like I would say 70 percent into the project. Pretty much they were having some issues with materials and stuff like that. He wanted another person

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HUDSON

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2 to take over the job. I should work all of
3 them. I was too far into the project. I
4 take my job very seriously. The project
5 was beautiful, real nice. To me I think
6 that was a slap in the face. I refused to
7 do it.

8 Q. Well, did he say that he wasn't
9 satisfied with your work on the project?

10 A. Not a matter of -- that's the
11 thing. It is not a matter of not
12 satisfied. It's the case where there was
13 something that was going on in the project.
14 It started to affect in terms of my
15 materials or so. If I am not mistaken it
16 was before Covid and then Covid came and
17 everything get all expensive. It was a
18 matter of me ordering materials and a
19 matter of certain stuff that they didn't
20 want me to do which is not a case where
21 they kind of critique certain stuff. If
22 they wanted me to go that direction they
23 should have mentioned to me from before and
24 the way I was doing it was nothing wrong.
25 It's just the materials were really getting

1 HUDSON

2 to them. It's two floors -- like 300
3 circuits. I think that's what caused the
4 whole back and forth. Yes.

5 Q. I am a little unclear. Did
6 they want you to use less material? What
7 exactly was the issue?

8 A. No. The issue was -- it was a
9 set of pipes that we were feeding. It was
10 a set of boxes that was feeding us the
11 pipes. The pipes were taking a little
12 longer to get done and the path that was
13 chosen from in the beginning. I try to
14 choose easiest path. It's taking a little
15 longer to get the pipes done. It was a
16 case where the job was 85 percent sheetrock
17 completed, 85 percent sheetrock. So the
18 other issue with the pipe work taking a
19 longer time. Obviously like I said, the
20 materials, all the materials are actually
21 on the job. There is nobody taking nothing
22 off the job.

23 Q. Who is Vanessa Kleeman?

24 A. I do not know. I am
25 assuming -- I am not sure, his daughter or

HUDSON

wife. I don't know.

Q. I don't want you to assume.

MR. RICHMAN: Don't guess.

Q. I don't want you to assume.

Whether or not you know Mr. Kleeman's wife name, did you ever speak to Mr. Kleeman's wife?

A. There was a company party, in a brief introduction.

Q. Did you ever discuss this particular project that we're here for today with Mrs. Kleeman?

A. No.

Q. As we sit here today, do you know who owns this ladder?

A. The general contractor, they own the ladder.

Q. So it was owned by A.S.K. Electric?

A. No. Not A.S.K. Electric. George and Gus company. One of them owned the ladder. I don't know exactly who but it wasn't A.S.K. Electric.

Q. When you spoke to Mr. Kleeman

HUDSON

after this accident occurred, you gave him a verbal report; correct?

A. Yes.

Q. You also texted him a photograph that you took of the Plaintiff; correct?

A. Yes.

Q. At any time did you write an e-mail or some other form of report to Mr. Kleeman or anybody else as an accident report?

A. No. No.

Q. So to your knowledge, did anyone prepare an accident report?

A. Not to my knowledge. Not to my knowledge. I don't remember me signing any paper.

Q. After the accident you spoke to the Plaintiff?

A. No, I never seen him again. They took him away. I never seen him again.

Q. I didn't ask you that whether you saw him again. I am asking, after the

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1 HUDSON

2 accident did you speak to the Plaintiff?

3 A. No.

4 Q. He didn't tell you what
5 happened?

6 A. No. I didn't talk to him after
7 the accident. More than me concerned with
8 how he was doing and he barely couldn't
9 respond. I never really spoke.

10 Q. Did you speak to anyone else at
11 the scene about the accident?

12 A. Yes. Everybody was curious as
13 to what happened. So I went over and over
14 again what happened.

15 Q. When you went over and over
16 again, who did you speak to?

17 A. Well, different from the
18 workers that was there when Gus arrived. I
19 spoke to him and I explained what happened.

20 MR. BRIGANTIC: Strike that as
21 nonresponsive.

22 Q. When you say you went over and
23 over things, who did you speak to that was
24 there when the accident occurred?

25 A. Well, just the workers. Me and

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HUDSON

the workers. For example, the guy I was working with say yesterday, I explained what happened. The other guys, some of them was working downstairs. When they come up, I explained to them what happened.

Q. But did you speak to the employees who were working in or around the Plaintiff?

A. I spoke to the person that was in the building. I was the only one right where the accident took place. So the commotion, everyone in the back, wherever they come forward to see what happened.

Q. When this accident occurred, you were the person closest to the accident?

A. Yes. I was ten feet away, this was closet and two electrical panels close by. I was working on one of them.

Q. Was anyone else in the immediate area?

A. Not to my knowledge. No. There was nobody else in the line of site or close by. Down the hall, in the

HUDSON

basement, they were working in the building.

Q. To your knowledge, who took the photograph of the boxes?

A. That I don't know.

MR. BRIGANTIC: I am going to mark my own copy of the contract as an exhibit. I will do a screen share myself.

(Whereupon, the aforementioned contract was marked as Defendant's Exhibit A for identification as of this date by the Reporter.)

Q. Mr. Hudson, do you see what I put up on the --

A. Yes.

Q. Can you read for me what the title of this document is?

A. Yes. Short form prime contract between owner and contractor.

Q. So you see that. You read off the title of the document.

Now, was your testimony you never seen this document before, correct?

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A. No, I never seen it before.

Q. In the second line down it says it's a -- it's between A.S.K. Electric Corp. that's your employer, right?

A. Yes.

Q. And Dava Partners LLC; correct?

A. Yes.

Q. So, it's between the owner and A.S.K. Electric; correct?

A. Yes.

Q. A.S.K. Electrical?

A. Yes.

Q. So we're clear, the signature. You see on the left Dava Partners, it's signed by Vanessa Kleeman for Dava Partners; correct?

A. Yes, I see that.

Q. You don't know who Vanessa Kleeman is?

A. No.

Q. On behalf of A.S.K. Electrical Corp., it was signed by David Kleeman, do you see that?

A. Yes. On the right.

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HUDSON

Q. So is there any signature here of a guy by the name of Gus?

A. Yes, I do not see. The one above it is not that clear. Yes. I don't recognize no other signature by Gus.

Q. So it's between Dava Partners LLC and A.S.K. Electrical Corp., right?

A. Yes.

Q. This is the prime contract; correct?

A. Yes.

Q. You explained earlier what a prime contract is; right?

A. Yes, I tried to. Yes.

Q. Doesn't this indicate to you that A.S.K. Electrical was serving as the general contractor?

MR. RICHMAN: Objection. You are now being argumentative. Move on.

MR. BRIGANTIC: Unless you are instructing him not to answer.

MR. RICHMAN: I am objecting to the question. You can answer if you

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HUDSON

can. This has been asked several times already. I am not going to go too much further.

Q: You can answer, Mr. Hudson.

A: Repeat the question.

(Whereupon, the referred to question was read back by the Reporter.)

A: I'm not sure.

Q: Wouldn't it be fair to say you don't know who the general contractor was on this job?

MR. RICHMAN: Objection. You already asked him who the general contractor was.

MR. BRIGANTIC: This is a different question. The objection is noted.

Q: You can answer, Mr. Hudson.

MR. BRIGANTIC: Read that back.

(Whereupon, the referred to question was read back by the Reporter.)

A: Yes. Gus, general contractor.

HUDSON

Q. You just testified that you don't know who the general contractor is; correct?

MR. RICHMAN: Objection. He did not say that.

A. I did not say that.

Q. What is your basis for the assertion that Gus is the general contractor?

A. Because when I got there Gus is in charge of the project. So Gus doing besides the electric, the AC and the security, Gus is doing the entire project. He is responsible for the project, for the sheetrock, the general build out. The general renovation.

Q. He was doing sheetrock?

A. Well, when I say sheetrock it's part of the construction; You have floor, sheetrock, you have the tiles. So he is pretty much doing everything except the electric.

Q. Let's just be clear. Gus had nothing to do with the air conditioning?

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HUDSON

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2 A. No. It's a different crew to
3 do AC.

4 Q. Gus had nothing to do with the
5 electrical?

6 A. Nothing, nothing to do with
7 electrical.

8 Q. Gus had nothing to do with the
9 security?

10 A. No. Nothing to do with
11 security.

12 Q. But he had something to do with
13 other construction activities?

14 A. Yes. Yes. The rest of the
15 construction.

16 Q. What do you mean the rest of?
17 Did he do the plumbing?

18 A. No. No.

19 Q. He didn't do the plumbing
20 either, right?

21 A. No. He didn't do the plumbing.

22 Q. Did he do the demolition?

23 A. That I don't know. Because I
24 came there after the demolition was done,
25 framing was done. That's when I came

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HUDSON

there. Any question about before, I don't know.

Q. You don't know about the demolition?

A. I don't know.

Q. Do you know whether he did the framing?

A. I don't know exactly. The framing was done when I got there. The framing was done ready for us to work there.

Q. So you don't know whether he did the framing either, right?

A. No.

Q. Was there any work done on the roof?

A. There was a unit going on the roof. There was also -- putting on a new tar, top on the roof.

Q. Who did the roofing?

A. Well, the guys, I don't know if they are connected to George. They're separate guys doing the exterior work. Not connected to George.

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HUDSON

1
2 Q. Who hired George?

3 MR. RICHMAN: If you know.

4 Q. Don't look at your lawyer for
5 your answer.

6 MR. RICHMAN: I don't want him
7 to guess. You're asking questions
8 that you already asked.

9 MR. BRIGANTIC: It's not clear
10 to me whether I got an answer.

11 Q. Who hired George?

12 A. I do not know.

13 Q. Would it surprise you to know
14 that A.S.K. Electric hired George?

15 MR. RICHMAN: Objection. Don't
16 answer that question. Don't answer
17 it. It's not a proper question. You
18 know that.

19 MR. BRIGANTIC: That's all
20 right. I will show him a document in
21 a second.

22 MR. RICHMAN: No. Showing him
23 a document doesn't give the answer to
24 a question. You asked the question
25 five times already. Enough is

HUDSON

enough.

MR. BRIGANTIC: I haven't used a document before nor has the Plaintiff. We're going to use the document.

MR. RICHMAN: Go ahead.

Q. I am going to mark as Defendant Kalnitech Exhibit B the subcontract between A.S.K. Electric and Jim Associates. Have you ever seen this document before?

(Whereupon, subcontract between A.S.K. Electric and Jim Associates was marked as Defendant's Exhibit B for identification as of this date by the Reporter.)

A. No.

Q. Prior to my showing this to you, have you ever seen A.S.K. Electrical contracting Corp. form of subcontract?

A. No.

Q. Are you in any way involved in the sub contracts?

A. No.

Q. What does this say right under

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HUDSON

A.S.K. Electrical Contracting Corp., what is the title of this document?

A. Master subcontract agreement.

Q. I am going to scroll down and you see identified as the subcontractor Jim Associates? Do you see that?

A. Yes, I saw that.

Q. Do you see the name under there identified as president Jorge Moscoso, do you see that?

A. Yes.

Q. The contractor is identified as A.S.K. Electrical contracting Corp., right? Have you ever seen this work order form for this project?

A. No. None of these forms, I haven't seen them. The office deals with all of this paperwork.

Q. It says the contract document, Underneath contract documents it's signed Jorge Moscoso on behalf of Jim Associates and on the other side it's signed by A.S.K. Electrical Contracting Corp. by David Kleeman, do you see that?

HUDSON

A. Yes, I see it. I see that.

Q. Do you recognize Mr. Kleeman's signature?

A. It looks different. I don't recognize it right here. Based on the documents you showed me before, it looks, yes, I don't see his signature there.

Q. Does this document refresh your recollection that you might have that it was actually A.S.K. Electrical Contracting Corp. --

A. No.

Q. You have to let me finish. Mr. Hudson, does this refresh any recollection that you might have that it was A.S.K. Electrical Contracting Corp. and not Gus who hired Jorge Moscoso?

A. No.

Q. You think it was your belief that Gus hired Jorge Moscoso?

A. I don't know.

Q. You don't know, right?

A. I don't know.

Q. Do you know what a toolbox

HUDSON

meeting is?

A. Yes. It's called toolbox talks.

Q. What is a toolbox meeting?

A. We go over various safety, with all the tools that we use. We keep a meeting, we go over and choose various topics, tool safety. Accidents that can cause using a particular tool. All to prevent any such injuries from happening.

Q. When you are on a job site, do toolbox meetings usually get held in the mornings?

A. No. We normally do it once a week. If we're in the city working once a week, only for our workers, electrical. We don't do it for the rest of the contractors, the rest of the workers.

Q. Your answer was only with respect to electrical workers?

A. Yes. Because if I am responsible for the -- when I am responsible for the guys working we only do toolbox talks only for electric.

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HUDSON

Q. To your knowledge, were there toolbox meetings for the other workers?

A. I am not sure. I only focus on me and my -- the workers that work with.

Q. Did you have workers working under you?

A. Yes.

Q. How many workers did you have working under you?

A. On a regular, I had one guy. Me and him during the project. Occasionally maybe we get an extra person or two persons to come in. In the beginning it was me and my helper and we do the whole project.

Q. You would report to Mr. Kleeman?

A. Yes. He pretty stopped by almost as much as he can. On the way for him going home he stopped by his office quite often.

Q. What kind of work does Mr. Kleeman do other than maybe owning Dava Partners?

HUDSON

A. I don't know. I know he owns A.S.K. Electric and I don't know what other kind of work he does.

Q. To your knowledge, is Mr. Kleeman a licensed electrician?

A. Yes.

Q. He is?

A. Yes.

Q. So do you know whether he has knowledge of actually working on a job site?

A. Yes, yes. He is very good. He knows everything about a job.

Q. How frequently did he stop by this work site?

A. If he is not busy sometimes for the five days I might see him like three days out of the five days.

Q. For the duration of the project, on average, would he be at the work site approximately three out of every five days?

A. Yes.

Q. When he was on the job site,

HUDSON

what did he do?

A. He always doing something. It's his own office. If he has to check in something that he wants to be changed, he will give instruction or if he decide to work something like, for example, if they were doing the cage, there is a cage with all the security stuff in there. He come and help us, set it up. He basically like, I say it's his project and he will check everybody. There was nobody off limits of what is getting done. He is paying to get it done. We pretty much have to do it to his satisfaction.

Q. So he had supervisory authority over the entire job site?

A. He owns the place. So, yes.

Q. Did he direct the work?

A. Well, he would give instructions. For example, he tells me what he wants to get done and I will do my part and direct the workers that are working underneath me. He tells the general contractor what needs to get done.

1 HUDSON

2 They will do it.

3 Q. You keep referring to the
4 general contractor but you testified
5 earlier you don't know who that is.

6 MR. RICHMAN: He did testify
7 that ten times already. He said Gus
8 was the general contractor.

9 MR. BRIGANTIC: We established
10 after we looked at the document.

11 MR. RICHMAN: Bob, you showed
12 him a document. The document said
13 what it said. You asked him numerous
14 times who he believed the general
15 contractor was and he has said Gus.
16 So stop asking him the same question.

17 MR. BRIGANTIC: Stop
18 testifying.

19 MR. RICHMAN: I am not
20 testifying.

21 MR. BRIGANTIC: Stop with the
22 colloquy and stop testifying.

23 MR. RICHMAN: I am not
24 testifying.

25 MR. BRIGANTIC: I am not here

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HUDSON

for your testimony. I am here for the witness. May I proceed?

MR. RICHMAN: If you are not -- if you are going to ask the same questions again.

MR. BRIGANTIC: I am not asking the same questions. We are operating now with respect to what David Kleeman did on the work site. We didn't talk about that so far this morning. Let me move on.

Q. Mr. Hudson, who was in charge -- when you are on a work site, do you have to sequence the work?

A. Yes.

Q. What does that mean?

A. Meaning that you plan out the day. You plan out what the workers to do. Sometimes I am in charge of ten, 15 guys. So I plan out the sequence. So when we start in the morning everyone gets their project. I team them up with who is going to work and I send them out. As they go along I check on them to see if they have

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HUDSON

difficulties and assist. When all of that is done I am working foreman. I go and work and I do something. Still I keep an eye and everything that is getting done.

Q. You sequence the work so it can get done in an orderly fashion?

A. Yes. Plus we also have to meet deadlines. We definitely have to plan it out. If not it's going to be chaos, people working on top of people and nothing is going to get done.

Q. On this job site, was there documents that set forth what the schedule would be, how long each trade would be there and what they will do?

A. I didn't see any documents that showed that. All I know, he wants to move into his new office. We try to get a project done as perfect as possible and as fast as I possible for him to move in. Exact dates, no, I didn't see any documents with exact dates.

Q. On this particular job site, who was responsible for scheduling the

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HUDSON

work?

A. David, he is responsible for scheduling the work. I went there to do my part and he would schedule with AC guy, with the plumbers and like I say Gus always pretty much there every day. So he know what needs to get done from David.

Q. So David would instruct Gus what to do?

A. Yes. Instruct all of us. It could be something, for example, he tells us Monday, he don't want to tell us again and again. He tell us what needs to be done. He come and observe and make sure it's getting done.

Q. If there had to be a change order David would have to approve that?

A. Well, in this case he just said hey, I like that to be changed. It's not a regular process of being in the city where it's kind of major to work in a change order. With him he say hey, I would like for you to have an extra light in the office. Just by saying it we do it. We

HUDSON

don't have to wait or get any other approval. We do basically what he wants.

Q. So regardless of whether there was the formality of the written change order, David Kleeman would be the guy to decide what he wanted done or not done?

A. Yes.

Q. He would confer with all the trades, right?

A. Yes. He interacts with all of us. He interact with me, Gus, the plumber. He definitely interacted.

Q. After the accident occurred, you never saw or talked to the Plaintiff again, right?

A. No.

Q. Do you know if A.S.K. Electrical conducted an investigation?

A. I do not know.

Q. Did this project have an architect?

A. I do not know. I do not know to be honest.

Q. Do you ever recall David

HUDSON

Kleeman being on the scene conferring with an architect?

A. No.

Q. Did A.S.K. Electrical have a project file?

A. I do not know.

Q. Did you ever see a project file?

A. No.

Q. Did you personally, whether or not there was a project file, did you work with documents regarding this project?

A. Just the blueprint.

Q. Where was the blueprint kept?

A. I kept a blueprint by my box.

Q. Was there a blueprint available for all the trades to refer to?

A. Yes. Yes. Everybody has their print that they work off of, work with.

Q. Was it the same copy that you used?

A. Well, they would have whatever trade they are working. Mine I deal with electrical and I kind of had everything.

HUDSON

But then they have to focus on if they do the plumbing, they focus on the plumbing drawing, the mechanical focus on mechanical drawings. The general contractor focuses on their build out.

Q. When you say you had everything, what do you mean by that?

A. Well, the full set of drawings. That shows everything.

Q. Did the other trades have a full set of drawings?

A. Yes. Yes. They have their drawings but they also have access to the main big drawing that if they need to come and take a look at something that they deal with their part of work. It's there. They also had their drawings. Some of them had small printout of the same drawing. But the big main one was there on the job site for anybody to use.

Q. Was any equipment kept on-site in the event that a trade wanted to use equipment?

A. Yes. We have our own tools,

HUDSON

kept on-site. The contractor, they had their own tools. We only use what is provided by A.S.K. Electric and our own personal tools. The other trade, their boss supply them with the tools they need to get the job done.

Q. I understand that. What I am asking is, putting aside that the trades themselves might bring equipment onto the site for their own use, was there equipment at the job site for trades to use if they wanted to or if they needed to?

A. No. Only, like I said, stuff that they use it, whatever they provide for them. For us, whatever we need was provided for us. There was no equipment like any type of machine or anything that anybody could use. Whatever they using is specialized to that particular trade and to who was going to use it.

Q. Going back to the accident. Did you see the Plaintiff work on the ladder before he fell?

A. No, I did not.

HUDSON

Q. If you were going to work on this ladder in the position where it was, how would you properly use the ladder?

A. There is two ways he could have done it. You could -- it depends on the fact that the ladder -- the top of the ladder is actually pretty much the same height of the level where he was working. So it could definitely open the ladder, walk up and walk into the space or if he decided to lean the ladder up against it he has to make sure that it is something secure and they put the ladder so he doesn't slide out. So the proper way would be to always best to open the ladder. That's the proper way. It's designed to be opened up not leaned against. There are special ladders that lean up against the walls. It's designed to opened up, full extend out and you climb up onto it.

Q. When you say you open the ladder, you mean he has an A frame ladder you open both sides and it locks into place?

HUDSON

A. Yes. You open both sides and there are two supports, the left and right. You have to make sure those are fully extended before you actually climb on the ladders. Fully horizontal.

Q. Prior to this accident happening, you did not notice which way he was using the ladder?

A. I did not notice.

Q. If you had seen him on the ladder leaning up against the wall, would you have told him not to do it that way?

A. Yes, 100 percent.

Q. Why is that?

A. There is always a possibility. When you have it leaned up depending, because during the construction you have all kind of particles, dust, all of this stuff. When you lean up on the side there is always the risk of sliding from underneath you. There is always a risk.

Q. After the accident occurred, did you inspect to see whether the parts of the ladder, when you open it up, that lock

1 HUDSON

2 in place, whether that was working
3 properly?

4 A. Yes. It was working properly.

5 Q. Now, you said that at the top
6 of the ladder it was even with where that
7 opening was in the picture?

8 A. Yes. Approximately even with
9 where the opening is. It's a closet and
10 when you walk into the closet then you have
11 a little storage section on the left-hand
12 side that was framed out. Inside was
13 completely framed out. To access it you
14 have to climb on the ladder to climb into
15 the storage area.

16 Q. What was the purpose of that
17 little storage area?

18 A. Just extra storage for the
19 office. It's a big office. Extra storage
20 where they can store files or whatever they
21 want to store it. Try to utilize as much
22 space as possible.

23 Q. At the time the Plaintiff was
24 injured, what was he doing in that area?

25 A. I don't know exactly what he

HUDSON

was doing. I know to finish up inside there the plywood was laid down and everything. Pretty much finish up. You have to sheetrock, plaster and maybe finish it and installing the doors. I don't know exactly what it was but it was something that has to do with inside the storage area that I believe he was working on.

Q. To your knowledge, was the Plaintiff wearing a tool belt when he was injured?

A. Well, no. I don't know. When he fall down I didn't see a tool belt or anything. I couldn't answer that whether he was wearing a tool belt.

Q. To your knowledge, was he wearing a harness?

A. No harness.

Q. There was no one else around him within his vicinity?

A. No. It was just me working at the panel and he was by the closet.

Q. Let me make a five minute break, see whether I have anything at this

1 HUDSON

2 moment.

3 A. Thank you.

4 (Whereupon, an off-the-record
5 discussion was held.)

6 Q. Mr. Hudson, it's my
7 understanding that you would either like to
8 revise or extend your answer to a
9 particular question. Go ahead and do that
10 if you would like.

11 A. Okay. Yes. So if you guys
12 remember when I said I didn't see exactly
13 how he had the ladder when he went into the
14 storage area to work. But I heard, when I
15 heard the sound I turned around and I saw
16 him falling down. I said the ladder was
17 open but now I am really thinking about it.
18 There is no way he could have fallen if the
19 ladder was open. He had to have the ladder
20 closed and lean upright above the opening.
21 The opening below the storage area.

22 MR. RICHMAN: Can we call the
23 open area the cubby?

24 A. The cubby.

25 Q. So it's your belief that he did

1 HUDSON

2 not have the ladder open but that it was
3 leaning up against a wall?

4 A. Yes. I am not sure how he had
5 it. That's the only way he would be able
6 to fall the way he fall. He had to have it
7 leaned up against the cubby.

8 Q. After the accident, you said
9 you inspected the ladder, did you look at
10 the feet of the ladder?

11 A. Yes. I did inspection, I look
12 at the ladder to see any defects, any
13 issues with the ladder.

14 Q. Can describe what the feet, the
15 bottom part of this ladder is in terms of
16 the feet of the ladder?

17 A. All ladders have like a rubber.
18 It has a rubber insulation. A fiberglass
19 ladder. Fiberglass and rubber feet at the
20 bottom.

21 Q. This one did?

22 A. I don't remember 100 percent.
23 It's been a long time ago. I don't
24 remember if this one had. All I know is I
25 did not see any issues with the ladder. I

HUDSON

1
2 am assuming it had. I didn't see any
3 issues or anything that arise any suspicion
4 that maybe the ladder was defective why it
5 fall. The ladder was in good condition.

6 Q. Now as I understand your
7 testimony, you had to make a phone call.
8 Mr. Kleeman was not at the site when this
9 accident occurred?

10 A. No, he was not.

11 Q. Did he come to the scene, to
12 the work site on the same day later?

13 A. No. He was away somewhere. I
14 don't know if he was hunting or fishing, he
15 was away somewhere. He did not come the
16 site the same day of the accident.

17 Q. How soon after the accident did
18 he then come back to the work site?

19 A. I don't remember exactly but I
20 know it was as soon as possible. But
21 whatever he was doing he came back as soon
22 as possible. I don't remember the exact
23 time or so when he came back. I know he
24 came back as soon as possible.

25 Q. Was it the next day?

1 HUDSON

2 A. I don't remember to be honest,
3 I don't remember if it was the next day.

4 Q. When he did come back, the next
5 time that he came back to the work site,
6 after the accident, did he do any
7 inspection or investigation?

8 A. Well, he asked me what happened
9 and he look and I showed him where the
10 accident occurred and he basically just
11 checked. Checked to see exactly based on
12 whatever I told him that happened. Based
13 on whatever he heard from what I told Gus
14 about the accident which is the same thing
15 I told him what happened.

16 Q. Do you know what a waiver of
17 lien is?

18 A. It's when somebody wants -- a
19 waiver of lien, that's when you restrict
20 somebody from -- for example, if you are
21 finishing up the a project and somebody
22 owes somebody money. You can issue a
23 waiver of lien against that property.

24 Q. Isn't it where if you do work
25 on a job site and you get paid you waive

1 HUDSON

2 any continuing lien, right?

3 A. Not sure. I am not sure.

4 Q. Have you ever seen a waiver of
5 lien?

6 A. If what?

7 Q. Have you ever seen a waiver of
8 lien?

9 A. No, never seen.

10 Q. Have you ever signed one?

11 A. No.

12 MR. BRIGANTIC: I am going to
13 show you Defendant's Exhibit C. Did
14 you see what I put up on the screen?

15 A. Yes.

16 Q. Can you read off the very top
17 line which is the title of the document?

18 A. Final combined waiver of lien
19 and general release.

20 (Whereupon, the aforementioned
21 waiver of lien was marked as
22 Defendant's Exhibit C for
23 identification as of this date by the
24 Reporter.)

25 A. To whom it may concern.

HUDSON

Q. You never seen this document before?

A. No.

Q. This refers to Jim Associates Corp. having been employed by A.S.K. Electrical Corp. to furnish labor and/or materials for the building at 217-14 Hempstead Avenue, Queens. Do you see that in the first paragraph?

A. Yes. I just read it.

Q. Does this refresh any recollection you might have, whether it was A.S.K. Electrical that hired Jim Associates?

A. No. In terms of the paperwork I never seen the paperwork that dealt with the project. Only paperwork I deal with the prints that they gave me to proceed with the build out for the electric.

Q. There is a paragraph that starts now, do you see that paragraph?

A. Yes.

Q. The next paragraph after that is whereas. Do you see that?

HUDSON

A. Yes.

Q. Can you read for me what the first sentence in that whereas paragraph?

A. Whereas Jim Associates Corp. the undersigned, as releasor, successors and assigns, in consideration of \$62,891 total cumulative dollars and other goods and valuable consideration, has released and does release and forever discharge Days Partners the owner and A.S.K. Electrical Corp., general contractor, collectively referred to herein as the releases and each of the respective releases, shareholders, officers, directors, employees, agents, representatives, successors and assigns from all actions, causes of actions, sums of money, or any other liability arising out of or in connection with the project and work contracted for and demands whatsoever, in law, admiralty or equity, which against either or both of the releasees.

Q. That's the first sentence. You can stop there.

HUDSON

A. Okay.

Q. You would agree with me that this waiver of lien refers to Davs Partners LLC as the owner and A.S.K. Electrical Corp. as the general contractor, correct?

A. I do not want to say. Even though I read it, I do not want to say. I still think this is something that should definitely be between the lawyer and you guys. I do not want to give any statement based on these documents which I am seeing right now.

Q. I'm sorry, Mr. Hudson. That is not responsive to my question. All my question is would you agree with me that the waiver of lien refers to Davs Partners LLC as the owner?

A. Yes.

Q. And A.S.K. Electrical as the general contractor?

A. Yes. It said it on the document.

Q. Okay. Does this refresh your recollection you might have that it was

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HUDSON

actually A.S.K. Electrical Corp. that was the general contractor?

A. No. Not based on this document. I know that -- like I said I work for A.S.K.

It was their project that I'm doing.

MR. BRIGANTIC: That's all I have subject to any follow-up to anything else that anyone else may have. Thank you, Mr. Hudson.

MR. KLEIN: I have a few follow-up.

EXAMINATION BY

MR. KLEIN:

Q. Sir, when you began working on the morning of the accident, was the worker who was involved in the accident, was he already working?

A. No.

Q. Did you see him bring the ladder up into that cubbyhole area that we described?

A. No.

HUDSON

Q. When did you first become aware that he was working in that area?

A. When I start -- when I started working on the panel I only became aware of it when I heard the noise from the whole tumbling.

Q. So you only became aware that he was working in that cubbyhole area after you heard a noise?

A. Yes.

Q. Which you later found out to be the accident?

A. Yes. I heard the noise. I turned my head to the left and I saw him coming down. If it was a case where I noticed any -- if I go there physically to check and I see and I notice anything that was wrong or saw something incorrectly I would definitely fix the issue to prevent accident. It's always good to have an accident free environment.

Q. So you never saw him before you heard that noise; is that correct?

A. No.

HUDSON

Q. What was the size of the cubbyhole area?

A. I would say, roughly say about five feet by five feet. Five feet.

Q. Five feet by five feet square?

A. Yes.

Q. Are you saying that a six foot A frame ladder cannot have been set up in that area fully opened?

MR. BRIGANTIC: Objection to the form of the question. He can answer.

A. Yes. If it was fully opened it created a distance between him and the cubby. But he probably had it turned the other way. Maybe if say he was to face the ladder and outside and maybe climb up on the side but there is no way if he have it fully open it creates a gap. If he climb up to go to the cubby and fully open, you create a gap distance between the safe landing of the cubby and the top of the ladder. It definitely would be a wrong way to have it opened to climb in there.

HUDSON

Q. Could you bring up Exhibit 6 please. You see that red toolbox?

A. Yes.

Q. Going inside that space, is that where the cubbyhole area is?

A. Is there anyway you can zoom out?

Q. Where is the cubbyhole. Is it where --

A. Sorry. If I am standing in the closet, the cubby is on the left-hand side.

Q. Where is the closet? Is it where his head is, the worker on the floor head or in the area where that red toolbox is?

A. No. It's where the red toolbox is and the ladder is inside the closet.

Q. There is no door or anything closing off that cubbyhole area, correct, it's an open entranceway in there?

A. It was actually on the construction. Eventually there would be a door installed to close it off.

Q. But at the time of the accident

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1 HUDSON

2 there was no door there, correct?

3 A. No.

4 Q. You don't know if he was
5 working in the hole in the wall or if he
6 was working by standing on the ladder;
7 correct?

8 A. Based on how I see him coming
9 down, he had to be working inside the hole
10 and -- based on how he fell, he had to be
11 working inside the cubbyhole and up and
12 exiting the hole. That's when the whole
13 accident occurred. Based on how I saw him
14 falling.

15 Q. Before he fell, did you
16 actually see him place one of his feet on
17 the ladder, yes or --

18 A. No.

19 Q. Did you ever see him place any
20 feet on top of the ladder, yes or no?

21 A. No.

22 Q. When you saw him for the very
23 first time, tell me where his feet were.

24 A. He came down head first. So
25 the cubby is on the left-hand side. He

1 HUDSON

2 came tumbling down head first on the
3 right-hand side.

4 Q. Where were his feet when you
5 first saw him?

6 A. His feet were facing towards
7 the cubby on the left-hand side.

8 Q. When you saw the ladder at that
9 time, was it opened or closed?

10 A. The ladder was, it had to be
11 closed. It had to be closed.

12 Q. Not what it had to be. When
13 you saw it was it opened or closed?

14 A. Closed.

15 MR. RICHMAN: Hold on. For the
16 record when you say closed, does that
17 mean the A frame is not A frame or it
18 means something else?

19 A. It would be closed being
20 exactly how you see the ladder right there.
21 Like folded in. That I consider it closed.

22 MR. RICHMAN: Just to clarify
23 for the record. The way that you see
24 the ladder now is what you are
25 referring to as a closed ladder;

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correct.

A. Yes.

Q. To your understanding, what was the reason he would use the ladder in a closed position like that?

A. Well, to get inside the cubby. The cubby is probably approximately, I would say, almost six feet high. You need a ladder to get inside the cubby.

Q. If the ladder was placed sideways along the opening, wouldn't he be able to get into the opening that way?

A. Yes. Yes. You would be able to.

Q. You didn't see him get into the opening; correct?

A. No. I didn't see him get into the opening.

Q. You didn't see him get out of the opening?

A. No. Just when he tumbling, coming down.

Q. You believe that using a ladder in a closed position is an improper use of

1 HUDSON

2 a ladder, correct?

3 A. If you don't have the right
4 type of ladder. We all do it on-site but
5 it's not recommended if you don't have the
6 proper type. Depending on certain place
7 you're working you need various different
8 size ladders.

9 Q. Would the ladder that is shown
10 in the photograph Exhibit 6 would be the
11 proper ladder to use under those
12 circumstances?

13 A. I would recommend a shorter
14 ladder.

15 Q. But if there was no shorter
16 ladder available, could the ladder shown in
17 this Exhibit 6 have been used?

18 A. Yes. It could be used. They
19 had to be careful. Properly set it up.

20 Q. In a closed position though?

21 A. Yes. Yes. There is always a
22 risk. The way the ladder is right there,
23 there is always a risk whenever you use a
24 ladder like that.

25 Q. But it could be used that way?

1 HUDSON

2 correct?

3 A. Yes. In cases where you do use
4 it that way, they do not recommend it.

5 Q. Now, who did you tell about the
6 accident again?

7 A. I told David Kleeman which is
8 my boss. I said on the phone about the
9 accident, I called Gus. I told him what
10 happened.

11 Q. Did you tell him that you saw
12 the ladder in a closed position?

13 A. No. I didn't tell him that I
14 saw the ladder in a closed position.

15 Q. Why didn't you tell him you saw
16 the ladder in a closed position?

17 A. No. The reason -- no. The
18 thing I am saying is, I only -- I know they
19 keep asking me before. I know this whole
20 thing, you keep asking me before how he had
21 it before. I pretty much saw when the
22 whole thing, when he is tumbling over. So
23 the ladder was closed. But as how before,
24 I don't know how he had it before or how it
25 was cleaned up before. The way you are

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looking at the ladder right now, the ladder was tumbled over on top of him. So the way it is positioned right now, it's moved.

Q. Did you tell David Kleeman that you saw the ladder in a closed position after the accident, yes or no?

A. Yes. I told him I saw it in a closed position.

Q. So that would be something that would be included in an accident report because you would consider that something important, correct?

A. Yes. Like I said I explained to them what happened. Exactly what happened and if there was paperwork I was filling out or signed, that would be something that would be included in an accident report.

Q. Were there any shorter ladders available for the worker to use?

A. I do not know. His boss provided him with all the stuff that they need and for us, we didn't have a shorter ladder there for him to use. He was using

1 HUDSON

2 his company ladder. So I don't know if
3 they had a shorter one for him to use.

4 MR. KLEIN: Thank you very
5 much, sir. Nothing further.

6 MR. BRIGANTIC: I have a very
7 brief follow-up.

8 EXAMINATION BY

9 MR. BRIGANTIC:

10 Q. Mr. Hudson, after the accident
11 happened, where was the ladder?

12 A. The ladder, just how you see
13 the ladder. The ladder was taken off of
14 him and they leave the ladder off.

15 Q. So right after the accident
16 occurred, the ladder was laying on top of
17 the Plaintiff?

18 A. Yes. The him, the ladder,
19 everything was tumbled down to the right of
20 the closet.

21 Q. Somebody picked up that ladder
22 and put it up against the wall?

23 A. It is naturally -- we pick the
24 ladder up off of him. I can't tell you the
25 way -- the way it's positioned right now.

1 HUDSON

2 If somebody purposely put it that side, the
3 ladder was taken up off of him.

4 Q. Who did that?

5 A. There was other workers who run
6 and came right when the whole thing
7 happened. I was more concerned because I
8 saw the blood coming from his face. I was
9 more concerned if he is okay while calling
10 for the ambulance. Calling 911 to make
11 sure to get help.

12 Q. Were they the coworkers of the
13 Plaintiff?

14 A. Yes.

15 Q. Do you know whether they spoke
16 to the Plaintiff before they picked up the
17 ladder off of him?

18 A. No. Everybody was trying to
19 find out, make sure he is okay. They
20 trying to talk to him, make sure he is
21 okay.

22 Q. Do you happen to know whose
23 legs are in that photograph?

24 A. That's one of the co-workers
25 that work with the Plaintiff on the ground.

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You can tell he has like the same piece of the T-shirt.

Q. I am asking, do you happen to know the name of that person?

A. No.

MR. BRIGANTIC: That's all I have. Thank you.

(Whereupon, at 2:00 p.m., the Examination of this witness was concluded.)

• • • •

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D E C L A R A T I O N

I hereby certify that having been first duly sworn to testify to the truth, I gave the above testimony.

I FURTHER CERTIFY that the foregoing transcript is a true and correct transcript of the testimony given by me at the time and place specified hereinbefore.

DWAYNE HUDSON

Subscribed and sworn to before me

this ____ day of _____ 20____

NOTARY PUBLIC

HUDSON
E X H I B I T S

PLAINTIFF'S EXHIBITS

EXHIBIT NUMBER	EXHIBIT DESCRIPTION	PAGE
Exh 1	contract	17
Exh 2	proposal	19
Exh 3	proposal dated June 12, 2019	21
Exh 4	proposal dated June 26, 2019	22
Exh 5	photograph	34
Exh 6	photograph	34
Exh 7	piece of paper was deemed	8

(Exhibits retained by court reporter)

DEFENDANT'S EXHIBITS

EXHIBIT NUMBER	EXHIBIT DESCRIPTION	PAGE
A	contract	72
B	subcontract	80
C	waiver of lien	103

(Exhibits retained by Counsel.)

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(None)	

QUESTIONS MARKED FOR RULINGS	
PAGE LINE QUESTION	
(None)	

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C E R T I F I C A T E

STATE OF NEW YORK)

: SS.:

COUNTY OF SUFFOLK)

I, AILEEN KOVEN, a Notary Public for
and within the State of New York, do hereby
certify:

That the witness whose examination is
hereinbefore set forth was duly sworn and
that such examination is a true record of
the testimony given by that witness.

I further certify that I am not
related to any of the parties to this
action by blood or by marriage and that I
am in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 29th day of April 2022.



AILEEN KOVEN

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ERRATA SHEET
VERITEXT/NEW YORK REPORTING, LLC

CASE NAME: Royce Espinoza, Stalin Rodrigo v. DAVS Partners LLC Et

DATE OF DEPOSITION: 4/11/2022

WITNESSES' NAME: Dwayne Hudson

[illegible]

Dwayne Hudson

SUBSCRIBED AND SWORN TO BEFORE ME
THIS _____ DAY OF _____, 20____

(NOTARY PUBLIC)

MY COMMISSION EXPIRES:

[& - aforementioned]

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Civil Practice Law and Rules

Article 31 Disclosure, Section 3116

(a) Signing. The deposition shall be submitted to the witness for examination and shall be read to or by him or her, and any changes in form or substance which the witness desires to make shall be entered at the end of the deposition with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness before any officer authorized to administer an oath. If the witness fails to sign and return the deposition within sixty days, it may be used as fully as though signed. No changes to the transcript may be made by the witness more than sixty days after submission to the witness for examination.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE STATE RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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